

VIA ECF

April 28, 2023

The Honorable Ona T. Wang
United States District for the
Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street
New York, New York 10007-1312

Re: *JPMorgan Chase Bank, National Association, London Branch v. Tesla, Inc.*,
No. 1:21-cv-09441-PGG-OTW (S.D.N.Y.)

Dear Judge Wang:

Plaintiff JPMorgan Chase Bank, National Association, London Branch (“JPMorgan”) and Defendant Tesla, Inc. (“Tesla”), by and through their respective undersigned counsel, write pursuant to the Court’s March 9, 2023 Order (ECF No. 78) and have attached hereto as Appendix A the jointly composed agenda for the May 11, 2023 status conference.

Since the February 16, 2023 conference, the parties met and conferred on March 8, 2023 and April 24, 2023 and exchanged correspondence on February 24, 25 and 28, March 7, 10, 14, 18, 21, 23 and 28, and April 2, 7, 14, 18, 20, 21 and 27, regarding the issues discussed at the February 16 conference.

On April 14, JPMorgan made productions to Tesla of 47 documents, followed by 11 additional documents and certain clean up productions of metadata and one document on April 15 and 21. This production included: (1) per the Court’s order (Court Conf. Tr. 20:15–23), responsive communications between Sean Engles and JPMorgan’s custodians from August 15 to September 1, 2018, which were reviewed without any search term limiters; (2) the final version of the Market Risk Deep Dive Report authored by Mr. Engles, in both PDF and Word format; (3) non-custodial trade data reflecting trades related to the Tesla call spread portfolio from August 2018, and from May 1, 2021 to August 31, 2021, per Tesla’s request in the parties’ joint letter (ECF No. 67, at 3); and (4) Profit & Loss (“P&L”) data reflecting the year-end P&L for the Tesla call spread portfolio over the seven-years term of the warrants.

On March 3, 2023, Tesla produced 2,065 documents, consisting of custodial data responsive to existing search parameters and re-productions of 1,009 previously produced documents. On March 24, Tesla produced 27 documents, consisting of custodial data from existing and newly agreed-to search parameters. Also on March 24, Tesla produced 3,514 documents, consisting of additional copies of cloned discovery at JPMorgan’s request. On April 7, Tesla produced 38 documents, including 20 cloned documents. On April 14, Tesla produced 794 documents, consisting of responsive documents identified through the

expanded parameters that Tesla agreed to run at JPMorgan's request. On April 21, Tesla produced 488 additional documents hitting on new and existing search parameters.

Appendix A reflects certain open issues that the parties are still discussing. In addition, the parties are still reviewing the recent productions and reserve the right to raise any deficiencies identified during that review prior to the conference on May 11, 2023.

The parties are still conferring about the issues in Appendix A, and do not yet believe they have reached an impasse on those issues. The parties therefore propose to submit an updated agenda identifying any remaining areas of impasse by Tuesday, May 9, 2023. The parties look forward to a productive conference with the Court on May 11.

In addition, the parties are in receipt of documents from third-party dealer banks who also held warrants in Tesla stock and additional productions may be forthcoming. The parties have not conferred regarding third-party discovery. The parties reserve the right to raise issues related to third-party discovery, and any need for motion practice, once they receive and review any additional productions that arrive prior to the May 11 status conference.

Respectfully submitted,

By: /s/ Frances E. Bivens

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Appendix A

**Joint Agenda for Status Conference
May 11, 2023**

- I. Sufficiency of each party's document production.**
- II. Sufficiency of each party's privilege log and the validity of certain assertions of privilege or work product protection.**
- III. Sufficiency and timing of third-party productions from other dealer banks.**
- IV. Number and timing of depositions, and scheduling considerations.**
- V. Agenda for any additional meet-and-confers regarding discovery.^{1, 2}**

¹ Tesla writes separately to note that it requests this agenda item because: (i) the parties' hourlong meet-and-confer on March 8, 2023 focused mainly on JPMorgan's requests to Tesla, (ii) JPMorgan did not accept Tesla's follow-up requests to meet and confer until after the production deadline on April 14, 2023, and (iii) the parties thereafter had preliminary discussions on April 24, 2023.

² JPMorgan disagrees with Tesla's characterization of the meet and confer process in footnote 1. Tesla would not agree to file the joint agenda without the footnote.